

AMENDED IN SENATE JUNE 10, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1169**

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**Introduced by Assembly Member Daly**

February 22, 2013

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*An act to amend Section 1785.3 of the Civil Code, relating to consumer credit reports. An act to add and repeal Chapter 3.6 (commencing with Section 1785.28) of Title 1.6 of Part 4 of Division 3 of the Civil Code, relating to escrow agent credit.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1169, as amended, Daly. ~~Consumer credit reports: escrow agents: real estate.~~ *Escrow agent rating service: escrow agents.*

*Existing law, the Consumer Credit Reporting Agencies Act, requires a consumer credit reporting agency, upon request and proper identification of any consumer, to allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request. Existing law requires every consumer reporting agency to advise the consumer of the agency's obligation to provide a decoded written version of the file. Existing law grants the consumer the right to request a receive a written copy of the file. Existing law requires a consumer credit reporting agency to disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished.*

*Under existing law, a consumer credit reporting agency is required to furnish a consumer credit report only under certain circumstances,*

*including in accordance with the written instructions of the consumer to whom it relates. Existing law prohibits a consumer credit reporting agency from making any consumer credit report containing specified information. If the completeness or accuracy of any item of information in a consumer's file is disputed by the consumer, existing law requires the consumer credit reporting agency to reinvestigate and record the current status of the disputed information within a specified period of time. Existing law requires each consumer credit reporting agency that compiles and reports items of information that are matters of public record to specify the source from which that information was obtained. Existing law requires a person that procures a consumer credit report for the purpose of reselling the report to take specified actions.*

*Existing law authorizes a consumer suffering damages as a result of a violation of the Consumer Credit Reporting Agencies Act by any person to bring a court action for damages or injunctive relief, as specified.*

*This bill would, until January 1, 2017, require an escrow agent rating service, as defined, to comply with the provisions described above. The bill would make an escrow agent rating service subject to the requirements applicable to a reseller of credit information if it acts in that capacity, as specified. The bill would also require an escrow agent rating service to establish policies and procedures to protect the personal information it obtains from escrow agents. The bill would authorize an escrow agent who suffers damages as a result of the failure of an escrow agent rating service to comply with these provisions to bring a court action for specified damages.*

~~Existing law defines and regulates consumer credit reporting agencies and investigative consumer reporting agencies. Existing law defines a consumer credit report as a written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for certain purposes, as specified.~~

~~This bill would revise the definition of a consumer credit report to include a communication of information by a consumer credit reporting agency used for the purpose of serving as a factor in establishing the consumer's eligibility for a proprietary database and rating evaluation. This bill would define a proprietary database and rating evaluation as a report prepared for a fee and provided to a furnisher of credit, for the~~

~~purpose of evaluating a consumer in the consumer's capacity as a person performing specified services within real estate transactions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Chapter 3.6 (commencing with Section 1785.28)*  
2     *is added to Title 1.6 of Part 4 of Division 3 of the Civil Code, to*  
3     *read:*

4  
5             *CHAPTER 3.6. ESCROW AGENT RATING SERVICE*  
6

7     1785.28. (a) *For the purposes of this chapter, the following*  
8     *definitions shall apply:*

9         (1) *An escrow agent is any of the following:*

10        (A) *A person described in Section 17004 of the Financial Code*  
11        *who performs escrow agent services pursuant to the Escrow Law*  
12        *contained in Division 6 (commencing with Section 17000) of the*  
13        *Financial Code.*

14        (B) *A person performing escrow services for a title insurer or*  
15        *underwritten title company licensed pursuant to Article 3.7*  
16        *(commencing with Section 12389) of Chapter 1 of Part 6 of*  
17        *Division 2 of the Insurance Code.*

18        (C) *A person performing escrow services for a controlled escrow*  
19        *company, as defined in Section 12340.6 of the Insurance Code.*

20        (D) *A person licensed pursuant to Division 4 (commencing with*  
21        *Section 10000) of the Business and Professions Code, who*  
22        *performs escrow services, as described in Section 17006 of the*  
23        *Financial Code.*

24        (2) *An escrow agent rating service is a person or entity that*  
25        *prepares a report, for compensation or in expectation of*  
26        *compensation, for use by a creditor in evaluating the capacity of*  
27        *an escrow agent to perform settlement services in connection with*  
28        *an extension of credit.*

29        (3) *An escrow agent rating service shall be considered a reseller*  
30        *of credit information within the meaning of Section 1785.22 if it*  
31        *assembles and merges information contained in the database or*  
32        *databases maintained by a consumer credit reporting agency.*

33        (4) *“Consumer” also means escrow agent.*

1     (b) An escrow agent rating service shall comply with and be  
2     subject to the following sections of this title applicable to a  
3     consumer credit reporting agency:

4     (1) Subdivision (a) of Section 1785.10.

5     (2) Subdivision (b) of Section 1785.10, limited to the obligation  
6     to advise a consumer of his or her right to a decoded written  
7     version of a file.

8     (3) Subdivision (d) of Section 1785.10.

9     (4) Paragraph (2) of subdivision (a) of Section 1785.11.

10    (5) Section 1785.13.

11    (6) Paragraph (1) of subdivision (a) of Section 1785.15, limited  
12    to the right to request and receive a decoded written version of  
13    the file.

14    (7) Section 1785.16.

15    (8) Section 1785.18.

16    (c) An escrow agent rating service that acts as a reseller of  
17    credit information as described in paragraph (3) of subdivision  
18    (a) shall comply with and be subject to Section 1785.22.

19    (d) An escrow agent rating service shall establish policies and  
20    procedures reasonably intended to safeguard from theft or misuse  
21    any personally identifiable information it obtains from an escrow  
22    agent.

23    (e) An escrow agent who suffers damages as a result of the  
24    failure of a escrow agent rating service to comply with subdivision  
25    (b), (c), or (d) may bring an action in a court of competent  
26    jurisdiction pursuant to Section 1785.31 of the Civil Code.

27    (f) If an escrow agent rating service is also a consumer credit  
28    reporting agency as defined in subdivision (d) of Section 1785.3,  
29    nothing in this chapter shall be construed to suggest that an escrow  
30    agent reporting service that is also a consumer credit reporting  
31    agency is not otherwise required to comply with other provisions  
32    of this title applicable to consumer credit reporting agencies.

33    (g) This chapter shall remain in effect only until January 1,  
34    2017, and as of that date is repealed, unless a later enacted statute,  
35    that is enacted before January 1, 2017, deletes or extends that  
36    date.

37    ~~SECTION 1. Section 1785.3 of the Civil Code is amended to~~  
38    ~~read:~~

39    ~~1785.3. The following terms as used in this title have the~~  
40    ~~meaning expressed in this section:~~

1 ~~(a) “Adverse action” means a denial or revocation of credit, a~~  
2 ~~change in the terms of an existing credit arrangement which is~~  
3 ~~adverse to the interests of the consumer, or a refusal to grant credit~~  
4 ~~in substantially the amount or on substantially the terms requested.~~

5 ~~“Adverse action” includes all of the following:~~

6 ~~(1) Any denial of, increase in any charge for, or reduction in~~  
7 ~~the amount of, insurance for personal, family, or household~~  
8 ~~purposes made in connection with the underwriting of insurance.~~

9 ~~(2) Any denial of employment or any other decision made for~~  
10 ~~employment purposes which adversely affects any current or~~  
11 ~~prospective employee.~~

12 ~~(3) Any action taken, or determination made, with respect to a~~  
13 ~~consumer (A) for an application for an extension of credit, or an~~  
14 ~~application for the hiring of a dwelling unit, and (B) that is adverse~~  
15 ~~to the interests of the consumer.~~

16 ~~“Adverse action” does not include (A) a refusal to extend~~  
17 ~~additional credit to a consumer under an existing credit~~  
18 ~~arrangement if (i) the applicant is delinquent or otherwise in default~~  
19 ~~under that credit arrangement or (ii) the additional credit would~~  
20 ~~exceed a credit limit previously established for the consumer or~~  
21 ~~(B) a refusal or failure to authorize an account transaction at a~~  
22 ~~point of sale.~~

23 ~~(b) “Consumer” means a natural individual.~~

24 ~~(c) “Consumer credit report” means any written, oral, or other~~  
25 ~~communication of any information by a consumer credit reporting~~  
26 ~~agency bearing on a consumer’s credit worthiness, credit standing,~~  
27 ~~or credit capacity, which is used or is expected to be used, or~~  
28 ~~collected in whole or in part, for the purpose of serving as a factor~~  
29 ~~in establishing the consumer’s eligibility for: (1) credit to be used~~  
30 ~~primarily for personal, family, or household purposes, or (2)~~  
31 ~~employment purposes, or (3) hiring of a dwelling unit, as defined~~  
32 ~~in subdivision (c) of Section 1940, (4) a proprietary database and~~  
33 ~~rating evaluation, or (5) other purposes authorized in Section~~  
34 ~~1785.11.~~

35 ~~The term does not include (1) any report containing information~~  
36 ~~solely as to transactions or experiences between the consumer and~~  
37 ~~the person making the report, (2) any communication of that~~  
38 ~~information or information from a credit application by a consumer~~  
39 ~~that is internal within the organization that is the person making~~  
40 ~~the report or that is made to an entity owned by, or affiliated by~~

1 corporate control with, that person; provided that the consumer is  
2 informed by means of a clear and conspicuous written disclosure  
3 that information contained in the credit application may be  
4 provided to these persons; however, where a credit application is  
5 taken by telephone, disclosure shall initially be given orally at the  
6 time the application is taken, and a clear and conspicuous written  
7 disclosure shall be made to the consumer in the first written  
8 communication to that consumer after the application is taken, (3)  
9 any authorization or approval of a specific extension of credit  
10 directly or indirectly by the issuer of a credit card or similar device,  
11 (4) any report by a person conveying a decision whether to make  
12 a specific extension of credit directly or indirectly to a consumer  
13 in response to a request by a third party, if the third party advises  
14 the consumer of the name and address of the person to whom the  
15 request was made and the person makes the disclosures to the  
16 consumer required under Section 1785.20, (5) any report containing  
17 information solely on a consumer's character, general reputation,  
18 personal characteristics, or mode of living which is obtained  
19 through personal interviews with neighbors, friends, or associates  
20 of the consumer reported on, or others with whom he is acquainted  
21 or who may have knowledge concerning those items of  
22 information, (6) any communication about a consumer in  
23 connection with a credit transaction which is not initiated by the  
24 consumer, between persons who are affiliated (as defined in Section  
25 150 of the Corporations Code) by common ownership or common  
26 corporate control (as defined by Section 160 of the Corporations  
27 Code), if either of those persons has complied with paragraph (2)  
28 of subdivision (b) of Section 1785.20.1 with respect to a  
29 prequalifying report from which the information communicated  
30 is taken and provided the consumer has consented to the provision  
31 and use of the prequalifying report in writing, or (7) any consumer  
32 credit report furnished for use in connection with a transaction  
33 which consists of an extension of credit to be used solely for a  
34 commercial purpose.

35 (d) "Consumer credit reporting agency" means any person who,  
36 for monetary fees, dues, or on a cooperative nonprofit basis,  
37 regularly engages in whole or in part in the business of assembling  
38 or evaluating consumer credit information or other information on  
39 consumers for the purpose of furnishing consumer credit reports  
40 to third parties, but does not include any governmental agency

1 whose records are maintained primarily for traffic safety, law  
2 enforcement, or licensing purposes.

3 (e) ~~“Credit transaction that is not initiated by the consumer”~~  
4 ~~does not include the use of a consumer credit report by an assignee~~  
5 ~~for collection or by a person with which the consumer has an~~  
6 ~~account for purposes of (1) reviewing the account or (2) collecting~~  
7 ~~the account. For purposes of this subdivision, “reviewing the~~  
8 ~~account” includes activities related to account maintenance and~~  
9 ~~monitoring, credit line increases, and account upgrades and~~  
10 ~~enhancements.~~

11 (f) ~~“Employment purposes,” when used in connection with a~~  
12 ~~consumer credit report, means a report used for the purpose of~~  
13 ~~evaluating a consumer for employment, promotion, reassignment,~~  
14 ~~or retention as an employee.~~

15 (g) ~~“File,” when used in connection with information on any~~  
16 ~~consumer, means all of the information on that consumer recorded~~  
17 ~~and retained by a consumer credit reporting agency, regardless of~~  
18 ~~how the information is stored.~~

19 (h) ~~“Firm offer of credit” means any offer of credit to a~~  
20 ~~consumer that will be honored if, based on information in a~~  
21 ~~consumer credit report on the consumer and other information~~  
22 ~~bearing on the creditworthiness of the consumer, the consumer is~~  
23 ~~determined to meet the criteria used to select the consumer for the~~  
24 ~~offer and the consumer is able to provide any real property~~  
25 ~~collateral specified in the offer. For purposes of this subdivision,~~  
26 ~~the phrase “other information bearing on the creditworthiness of~~  
27 ~~the consumer” means information that the person making the offer~~  
28 ~~is permitted to consider pursuant to any rule, regulation, or formal~~  
29 ~~written policy statement relating to the federal Fair Credit~~  
30 ~~Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.),~~  
31 ~~promulgated by the Federal Trade Commission or any federal bank~~  
32 ~~regulatory agency.~~

33 (i) ~~“Item of information” means any of one or more informative~~  
34 ~~entries in a credit report which causes a creditor to deny credit to~~  
35 ~~an applicant or increase the cost of credit to an applicant or deny~~  
36 ~~an applicant a checking account with a bank or other financial~~  
37 ~~institution.~~

38 (j) ~~“Person” means any individual, partnership, corporation,~~  
39 ~~trust, estate, cooperative, association, government or governmental~~  
40 ~~subdivision or agency, or other entity.~~

1 (k) “Prequalifying report” means a report containing the limited  
2 information permitted under paragraph (2) of subdivision (b) of  
3 Section 1785.11.

4 (l) The term “proprietary database and rating evaluation” means  
5 a report prepared for a fee and provided to a furnisher of credit for  
6 the purpose of evaluating a consumer in the consumer’s capacity  
7 as an “escrow agent,” as that term is defined in Section 17004 of  
8 the Financial Code, or as a person performing the services  
9 authorized pursuant to subdivision (c) of Section 12340.3 of the  
10 Insurance Code, or as a real estate broker, or his or her employee,  
11 performing the services described in subdivision (e) of Section  
12 10131 of the Business and Professions Code. Information stored  
13 or retained by a person, or a person’s agent, used to prepare a  
14 proprietary database and rating evaluation constitutes a file, as  
15 defined in subdivision (g).

16 (m) “State or local child support enforcement agency” means  
17 the Department of Child Support Services or local child support  
18 agency acting pursuant to Division 17 (commencing with Section  
19 17000) of the Family Code to establish, enforce or modify child  
20 support obligations, and any state or local agency or official that  
21 succeeds to these responsibilities under a successor statute.